

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

POWERFUL KATINKA, INC. d/b/a PEARL OYSTER BAR, 07 CV 6036 (SAS)

Plaintiff,

-against-

EDWARD McFARLAND and ED'S  
LOBSTER BAR LLC,

Defendant.

**POWERFUL KATINKA, INC.'S RULE 26(a)(1) INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Plaintiff Powerful Katinka, Inc. d/b/a Pearl Oyster Bar ("Pearl Oyster Bar") makes the following initial disclosures:

**A. Individuals Likely To Have Discoverable Knowledge**

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A), Pearl Oyster Bar discloses the following persons who may have information that Pearl Oyster Bar may use to support its claims or defenses. Unless otherwise indicated, the persons listed below may be contacted through Pearl's counsel.

1. Rebecca Charles, Chef, Pearl Oyster Bar. Ms. Charles may have discoverable information relating to all aspects of the Restaurant Identity, as that phrase is defined in the Complaint, as well as all of Pearl's allegations against Defendants Edward McFarland ("McFarland") and Ed's Lobster Bar LLC ("Ed's") (together hereinafter referred to as "Defendants").

2. Edward McFarland, Chef, Ed's Lobster Bar. Mr. McFarland may have discoverable information relating to all of the allegations in the Complaint concerning

Defendants' misappropriation of all of the components of the Pearl Oyster Bar Restaurant Identity, Defendants' infringement of Pearl Oyster Bar's trade dress, McFarland's breach of his fiduciary obligations as the former Pearl Oyster Bar *sous chef*, his work on development of Ed's Lobster Bar before leaving employment at Pearl Oyster Bar, McFarland's improper disclosure of Pearl Oyster Bar's trade secrets, and plans, communications, including admissions, in connection with the establishment of Ed's Lobster Bar LLC and the opening of Ed's Lobster Bar. Mr. McFarland's last known address is 266 Tabb Avenue, Piscataway, New Jersey 08854. His phone number is unknown.

3. Andrew Rasiej, Officer, Ed's Lobster Bar LLC. Mr. Rasiej may have discoverable information relating to Defendants' misappropriation of the Pearl Oyster Bar Restaurant Identity and plans, designs, communications, including admissions, in connection with the establishment of Ed's Lobster Bar LLC and the opening of Ed's Lobster Bar. Mr. Rasiej's last known address is 225 Lafayette Street, New York, New York 10012. His phone number is unknown.

4. Michael Weinstein. Mr. Weinstein may have discoverable information relating to Defendants' misappropriation of the Pearl Oyster Bar Restaurant Identity and plans, communications, including admissions, in connection with the establishment of Ed's Lobster Bar LLC and the opening of Ed's Lobster Bar. Mr. Weinstein's last known address and phone number are unknown.

5. Ed's Lobster Bar LLC, New York Limited Liability Company. A Federal Rule of Civil Procedure 30(b)(6) witness designee of Ed's Lobster Bar LLC may have discoverable information relating to all of the allegations in the Complaint concerning Defendants' misappropriation of all of the components of the Pearl Oyster Bar Restaurant Identity,

Defendants' infringement of Pearl Oyster Bar's trade dress, McFarland's breach of his fiduciary obligations as the former Pearl Oyster Bar *sous chef*, McFarland's improper disclosure of Pearl Oyster Bar's trade secrets, and plans, communications, including admissions, in connection with the establishment of Ed's Lobster Bar LLC, the opening of Ed's Lobster Bar and damages. Ed's Lobster Bar is located at 222 Lafayette Street, New York, New York, 10012. Its phone number is (212) 343-3236.

6. Anthony Bonner, *Sous Chef*, Pearl Oyster Bar. Mr. Bonner may have discoverable information relating to the functions, responsibilities and fiduciary obligations of *sous chefs* as well as certain misrepresentations made by McFarland.

7. Arthur Bovino, former *garde manger*, Pearl Oyster Bar; former employee, Ed's Lobster Bar. Mr. Bovino may have discoverable information relating to McFarland's misappropriation and misuse of confidential knowledge that McFarland gained while working for Pearl Oyster Bar, McFarland's breach of fiduciary duty to Pearl Oyster Bar and the food preparation, presentation and style of service of Ed's Lobster Bar LLC. Mr. Bovino's last known address is 740 Humboldt Street, Brooklyn, New York 1122, cell phone (646) 408-2680.

8. Maria Nazzoli, waiter Pearl Oyster Bar. Ms. Nazzoli may have discoverable information relating to threats made by McFarland that he could misappropriate the Pearl Oyster Bar Restaurant Identity and misuse confidential knowledge he gained while working for Pearl Oyster Bar, relating to efforts by McFarland before his departure from Pearl Oyster Bar to solicit Pearl Oyster Bar's customers for his competing business and relating to McFarland's efforts prior to his departure from Pearl Oyster Bar to work on the development of Ed's Lobster Bar.

9. Mitch Burgess, Robin Green. They may have discoverable information relating to statements made by McFarland before his departure from Pearl Oyster Bar with respect to his

plans to open a “red sauce Italian” sea food restaurant. Their address is 108 Washington Place, New York, New York 10011.

10. Bria Moran, waiter, and Sylvano Patricio, first line cook, Pearl Oyster Bar. They may have discoverable information relating to McFarland’s solicitations of Pearl Oyster Bar employees to leave Pearl Oyster Bar and join Ed’s staff.

11. Bob and Nancy Bronstein. They may have discoverable information relating to efforts by McFarland’s before his departure from Pearl to solicit Pearl Oyster Bar’s customers for his competing business. Their address is not known.

12. Roger Olson, line cook, Pearl Oyster Bar. Mr. Olson may have discoverable information relating to McFarland’s visits to Pearl Oyster Bar after his departure.

13. Chris Lasicki, fish purveyor, Fathers Fish Company, Inc., 800 Food Center Drive, Unit No. 4, 6/ 8, Bronx, New York 10474, (718) 620-8600. Mr. Lasicki may have discoverable information relating to McFarland’s efforts to conceal his misappropriation of the Pearl Oyster Bar Restaurant Identity.

14. Michael Rubenstein, Sam Tell & Son, Inc., 58-51 Maspeth Avenue, Maspeth, New York 11378, (718) 386-0707. Mr. Rubenstein may have discoverable information relating to efforts by McFarland to secure suppliers while concealing his efforts to misappropriate the Pearl Oyster Bar Restaurant Identity.

15. Kenneth Snapp, line cook, Pearl Oyster Bar. Mr. Snapp may have discoverable information relating to McFarland’s April 2007 solicitation of information about Pearl Oyster Bar’s sources of foodstuffs and prices paid by Pearl Oyster Bar to its suppliers.

16. Lisa Fortunatu who was present at the December, 2006 meeting of Manhattan Community Board No. 1. She may have discoverable information relating to McFarland’s

statements to Manhattan Community Board No. 1 concerning his plans to establish a competing business. Her address is 368 Bryn Mawr Drive, Williamstown, New Jersey 08094, (917) 860-1746.

17. Elizabeth Clayman, Rob Dies, Jim Gage, Bria Moran, Maria Nazzoli, employees, Pearl Oyster Bar. They may have discoverable information relating to phone calls received by Pearl Oyster Bar from persons confused about the relationship and/or common ownership of Pearl Oyster Bar and Ed's Lobster Bar.

18. Donna Vilardi, Accountant, Vilardi & Co., 1051 Bloomfield Avenue, Suite No. 7, Clifton, New Jersey 07012, (973) 594-9911. Ms. Vilardi may have discoverable information relating to the damages that Pearl Oyster Bar has sustained by reason of Defendants' wrongful conduct.

Pearl Oyster Bar reserves its right to supplement these disclosures as it acquires further information through discovery or investigation.

#### **B. Potentially Relevant Documents**

Pearl Oyster Bar may use the following categories of documents to support its claims in this action:

1. Documents relating to the operation of Pearl Oyster Bar.
2. Photographs of Pearl Oyster Bar including, but not limited to, its food, menu and décor. These documents (## 1 and 2) are located either at Pearl Oyster Bar or in the offices of Pearl Oyster Bar's counsel.
3. Documents relating to Pearl Oyster Bar's revenues since Ed's has been open. These documents are located either at Pearl Oyster Bar or are maintained by Pearl Oyster Bar's accountant, Donna Vilardi & Co., 1051 Bloomfield Avenue, Suite No. 7, Clifton, New Jersey

07012.

4. Documents relating to phone calls received by Pearl Oyster Bar from customers after Ed's opened indicating confusion as to the relationship between and/or common ownership of Pearl Oyster Bar and Ed's Lobster Bar. These documents are located at Pearl Oyster Bar.

5. Documents consisting of Internet "blog" entries concerning Pearl Oyster Bar, Rebecca Charles, Ed's, McFarland and the similarities between the food, décor, menu and wine list at Pearl Oyster Bar and Ed's.

6. Documents consisting of published material including, but not limited to, newspaper articles, relating to Pearl Oyster Bar, Ed's and various other restaurants.

7. Photographs of Ed's including, but not limited to, its food, menu and décor. These documents (## 5, 6 and 7) are located in the offices of Pearl Oyster Bar's counsel.

8. Documents concerning correspondence between Pearl Oyster Bar and Defendants.

Unless otherwise indicated, the referenced documents presently are maintained either at 18 Cornelia Street, New York, New York 10014, or at the residence of Rebecca Charles. None of plaintiff's relevant records are maintained electronically.

Pearl Oyster Bar reserves its right to supplement these disclosures as it acquires further information through discovery or investigation.

#### **C. Computation of Damages**

Pearl Oyster Bar has suffered a decline in gross revenue for the period March – May, 2007 since Ed's Lobster Bar opened in comparison to the same months in 2006. The specific documents supporting this conclusion will be made available once an appropriate confidentiality order is in place. Pearl Oyster Bar also has been damaged at least to the extent of Ed's Lobster

Bar's revenues and profits derived from the misappropriation of confidential and proprietary material from Pearl and of Pearl's Restaurant Identity. Some information necessary for a calculation of damages is currently within the possession of Ed's Lobster Bar. Pearl will continue to investigate the amount of damages during the discovery phase of this case and will supplement its response in accordance with its obligations under the Federal Rules.

**D. Insurance Agreements**

Not applicable.

August 28, 2007

Schiff Hardin LLP  
900 Third Avenue  
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(212) 753-5000  
Judith S. Roth  
Steven M. Bocknek

By: \_\_\_\_\_

David Jacoby

*Attorneys for Plaintiff Powerful Katinka,  
Inc. d/b/a Pearl Oyster Bar*

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STATE OF NEW YORK )  
 : ss.  
COUNTY OF NEW YORK )

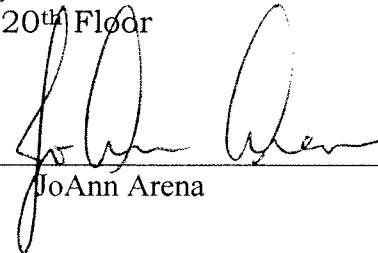
JoAnn Arena, being duly sworn deposes and says:

I am not a party of this action, am over 18 years of age and reside in Queens County, State of New York.

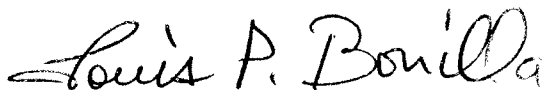
On the 28th day of August , 2007, I served by first class mail Powerful Katinka, Inc.'s Rule 26(a)(1) Initial Disclosures on:

Alan Serrins, Esq.  
Serrins & Associates  
233 Broadway, 18<sup>th</sup> Floor  
New York, NY 10279

Alon Markowitz, Esq.  
Markowitz & Chattoraj LLP  
271 Madison Avenue, 20<sup>th</sup> Floor  
New York, NY 10016

  
JoAnn Arena

Sworn to before me this  
28th day of August, 2007.



**LOUIS P. BONILLA**  
Notary Public, State of New York  
No. 01804918288  
Qualified in Bronx County  
Certificate Filed in New York County  
Commission Expires Dec. 31, 2008